IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL.

(1)A.O. No.186 of 2001.

1. Union of India, through Home Secretary,
   New Delhi,
2. Commandant, Indo Tebetan Border Police,
   18th Bn., Matli, P.O. Matli, District Uttarkashi.

……..Appellants.

versus

1. Workmen's compensation Commissioner/
   District Magistrate, Uttarkashi,
2. Sri Bhim Prasad, s/o Sri Sahbir Prasad,
   R/o Anchal Veri, Ward No.1, Suwakot,
   P.O. Basi, District Delekh (Nepal),
   At present residing at Uttarkashi,
3. Sri Vidya Singh Negi s/o Sri Man Singh,
   R/o village Nakuri, through Joginder Kumar,
   Shopkeeper, Uttarkashi,……. ..….Respondents.

(2)A.O. No.304 of 2002.

(Old No. 1274/2000)

1. Union of India, through the Home Secretary,
   Government of India, Ministry of Home, New Delhi,
2. The Commandant, Indo/Tibet Border Police,
   18th Batallion, Mathli, Post Mathli, District Uttarkashi.

……. Appellants

Versus

1. Sri Hira Singh s/o Adi Ram,
2. Smt. Sabri Devi w/o Sri Hira Singh,
   Both residents of Village Thanabatis, Oda.
   No.43, Panchayat Sukatia, Anchal Kamali,
   District Calicot. ……..Claimants/ Respondents,
3. Sri Vidya Singh Negi,
   R/o Village Nakar, Post Dunda,
   District Uttarkashi…….. Defendants/Respondents,

AND

(3)A.O. No.305 of 2002.

(Old No.1273/2000)

1. Union of India, through the Home Secretary,
   Government of India, Ministry of Home,
   New Delhi,
2. The Commandant, Indo-Tibet Border police,
   18th Battalion, Mathli, Post Mathli, Uttarkashi... Appellant/Respondents

Versus

1. Sri Hari Prasad s/o Late Jagatmani,
2. Km. Nani d/o Late Durga Prasad,
3. Sri Tula Ram brother of Late Durga Prasad,
   All residents of Village Dogra, Post Dadimandi,
   District Dailekh, Anchal Veri, Nepal….. Claimants/Opp. Parties,
4. Sri Vindhya Singh Negi,
   R/o Village Nakar, Post Dunda, Distt. Uttarkashi… Respondent.

Learned Standing Counsel for the appellant/Union of India.
Sri Lokendra Dobhal, learned counsel for the claimants/respondents.

Date: August 21, 2004.

Coram : Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

These three appeals have been filed against the award of compensation to the claimants under Workmen's Compensation Act by Workmen's Compensation Commissioner, Uttarkashi dated 16.2.2001, by Workmen's Compensation Commissioner, Rishikesh dated 13.7.1999, and again by the same authority dated 3.7.1999 respectively. Since all these cases relate to one and the same incident, all the appeals can be disposed of together conveniently.

Briefly stated, the facts are that some porters were duly appointed by the opp. Parties to work under opp. party No.2 the Commandant, I.T.B.P., 18TH Bn., Matli, District Uttarkashi for the purpose of patrolling in vide areas which patrolling started on 1.9.1995 with 10-11 porters in the leadership of their officer Narendra Singh from Harshil to Saran, when crossing the Lambdang Darra on 4.9.1995 at about 3 p.m. a snow storm suddenly emerged in which all the team members lost their way, communication systems disrupted, certain team membes were injured among which workman Bhim Prasad's left leg had to be removed below the knee alongwith damage caused to right lower leg who was held to be permanently disabled, and workmen Naya Ram and Durga Prasad died, whose cases relate to the case in hand. Bhim Prasad for himself and the dependents of the dead workmen filed claim petitions before the relevant authorities at Uttarkashi and Rishikesh who after consideration of the evidence before them by their judgments awarded compensation of Rs.2,60,292/- to Bhim Prasad, Rs.2.21,370/- to the dependents of Naya Ram and Rs.2,16,910/- to the dependents of Durga Prasad. Aggrieved from these awards of compensation the present appeals have been preferred by the appellants/Opp. Parties.

It is worthwhile to mention here that an application for condonation of delay was also moved in A.O. No.186 of 2001which unfortunately remained undisposed of. However, in the other two appeals, on similar grounds the delay stands condoned by this Court. The learned counsel for respondents had no objection in treating this appeal also to be within time. In view of the fact that delay has been condoned in other similar appeals, the delay in filing the aforesaid appeal is also hereby condoned.

The appellants have challenged the relationship of employer and employee between themselves and the alleged workmen as the porters were engaged by the respondent Vidya Singh Negi, Contractor, and the finding of the Workmen's Compensation Commissioner concerned (hereinafter referred to as the 'Commissioner') in this regard is said to be erroneous. Objections regarding the age of the workmen and claims being time barred were also taken and the finding of the Commissioner was said to be wrong in this regard.

We have heard the learned counsel for both the parties and perused the impugned judgments. A perusal of impugned judgments shows that the learned Commissioner concerned has discussed all the points in detail with reference to the law on the subject to arrive at his findings spread over 5 to 6 issues according to the pleadings of the parties. So far as the contention regarding the deceased and the injured being the employees of I.T.B.P. is concerned, the Commissioner has discussed the evidence of both the parties in detail. The claimants' evidence shows that the workmen got their food and wages from I.T.B.P. as stated by the injured Bhim Prasad and the respondent Vidya Singh had only told them that the I.T.B.P. requires some porters. It is also apparent that the patrolling operation was being undertaken under the leadership of the officer of I.T.B.P. on the routes of his own choice and not those included in the alleged agreement between I.T.B.P. and the contractor during which

the employees died and got injured. In such circumstances, the Commissioner has rightly held that the appellants were the employers of the workmen and not Vidya Singh. We see no error in this finding of the Commissioner.

So far as the amount of compensation to the claimants is concerned, the Commissioner has referred to the G.O dated 4.7.89 of the UP State showing entitlement of the workmen in the present case for compensation. Surprisingly, the rate list supplied by the I.T.B.P. itself shows the wages of porters to be Rs.150/- per day but the present claimants have admitted their wages at Rs.100/- per day only. At this rate the wages for the month comes out to be much more but the Commissioner has assessed it at Rs.2000/- per month in view of the limit fixed by the Workmen's Compensation Act for coming to the amount of compensation. The finding about age has been arrived at by the Commissioner on the basis of available relevant records by the claimants and there is no reason to find fault with it, besides this, appellants/opposite parties produced no evidence to controvert it. We have examined the compensation amount awarded in all the three cases with the help of Schedule IV of the Act and we find that the calculation made in the case of permanently disabled Bhim Prasad has been wrongly calculated inasmuch as the factor 216.91 has been multiplied by 1200, while it should have been multiplied by 1000, which would have given the correct compensation of Rs.2,16,910/-, instead of Rs.2,60,292/- awarded by the Commissioner. The learned counsel for respondents could not show us the basis for such distinction. The A.O. No.186 of 2001 is liable to be partly allowed to that extent. We find no merit in the other two appeals which are liable to be dismissed.

We therefore, conclude that A.O. No.186 of 2001 is partly allowed to the extent that claimant Bhim Prasad is entitled to a

compensation of Rs.2,16,910/- (two lac sixteen thousand nine hundred ten rupees) only and not to the compensation as awarded by the Commissioner.

A.O. No.304 of 2002 and No.305 of 2002 are hereby dismissed.

(B.S. Verma, J.) **(P.C. Verma, J.)**

SPA